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Commissioner's Secretary
Margalie Roman Salas
Office of the Secretary
Federal Communications Commission, The Portals
445 12th Street, SW, Room TW-A 325
Washington, DC 20554

Dear Secretary:

This letter is being submitted in response to the Federal Communication Commission's (FCC's) Notice of Proposed Rulemaking (NPRM) in WT Docket No. 99-87 to implement regulatory changes to the Commission's auction authority for wireless telecommunications services pursuant to the Balanced Budget Act of 1997. The New York State Thruway Authority (NYSTA) strongly urges the Commission to, as part of this rulemaking, retain the existing shared use licensing scheme for the non-multilateration portions of the 902-928 MHz LMS band.

NYSTA is a not-for-profit public corporation that operates and maintains the Governor Thomas E. Dewey Thruway, a 641-mile superhighway crossing New York State, which is the longest toll superhighway system in the United States. Approximately 230 million vehicles travel more than 9 billion miles on the Thruway each year. In 1993, NYSTA began implementation of an electronic toll collection system known as E-ZPass. With this system scanners mounted in toll plazas read and write toll information to transponders mounted in vehicles, and tolls are automatically debited from customers' accounts. Because toll transactions can be processed so much faster when done electronically rather than manually, E-ZPass has greatly reduced traffic congestion along the Thruway, particularly at high-traffic locations during peak travel periods. In 1998, almost 35 percent of all tolls collected on the Thruway were collected using E-ZPass and already in 1999 the utilization has increased to nearly 45 percent.

NYSTA is a member of the E-ZPass Interagency Group (IAG), an organization currently comprised of 12 not-for-profit public toll agencies in six states that are all implementing electronic toll collection under the name E-ZPass. The goal of the organization is to provide the public with a reciprocal and interoperable electronic toll collection system that allows a driver to utilize a single transponder for travel through multiple states, thereby further reducing congestion on all participating highway systems and improving air quality throughout the region.



There are currently more than 2.75 million toll transponders in circulation for use in the E-ZPass system in New York, New Jersey, Delaware, Maryland and Massachusetts. Electronic toll collection is scheduled for implementation in Pennsylvania within the next several months. The system has been so technically successful and popular with the public that at this time at least five additional toll agencies are pursuing acceptance into the E-ZPass IAG which would further extend the use of this technology to Ohio, West Virginia and across the New York-Canadian border. It is anticipated that use of the E-ZPass system will double in the next few years.

Implementation of E-ZPass requires the use of radio frequencies. Some time ago, the Commission decided to adopt a shared use licensing approach for the non-multilateral portions of the 902-928 MHz band, where the frequencies used to operate E-ZPass currently reside. This approach has worked well for implementation of E-ZPass and permits new states to join the E-ZPass system without fear of being unable to obtain the necessary frequencies for interoperability and reciprocity with other states in the system. It is therefore imperative that the Commission interpret the new language of 47 USC §309(j) as permitting continuation of a shared use licensing approach for the non-multilateral portions of the 902-928 MHz band.

The Balanced Budget Act of 1997 did bring change to 47 USC §309(j). Previously this section provided that if mutually exclusive applications are accepted for filing for an initial license involving use of the electromagnetic spectrum, then the Commission shall have the authority to grant such license through the use of competitive bidding. The Balanced Budget Act of 1997 amended this section so that it now provides that if mutually exclusive applications are accepted for an initial license, then the Commission shall grant the license through the use of competitive bidding. However, the new language of this section contains two important modifications to the apparent mandate for competitive bidding.

The first is that the Commission's use of competitive bidding must be consistent with the Commission's obligations in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations and other means in order to avoid mutual exclusivity in application and licensing proceedings. While the Commission has always had this obligation as set forth in a different section of the Communications Act, the Commission's responsibility in this regard appears to have been heightened and takes on greater importance because: (1) this obligation is now specifically referenced in 47 USC §309(j); and (2) the consequence of failing to resolve mutual exclusivity is now much more severe – mandatory rather than discretionary competitive bidding. This heightened responsibility to avoid mutual exclusivity argues strongly in favor of permitting continuation of a shared use licensing approach for the non-multilateral portions of the 902-928 MHz band.

Further, the public interest objectives that were the foundation for the Commission's original decision to adopt shared use licensing for the non-multilateration portions of the 902-928 MHz band are still valid today. These include: (1) non-multilateration LMS systems generally cover relatively short distances; (2) they promote spectrum efficient frequency reuse; and (3) in practice, shared use has been administratively efficient and promoted timely introduction of new or expanded service.

The second modification to the new mandatory competitive bidding requirement is the explicit exception for public safety radio services, including private internal radio services used by State and local governments, that: (1) are used to protect the safety of life, health or property; and (2) are not made commercially available to the public. E-ZPass should clearly fall within this exception. In no small measure E-ZPass contributes to the safety of life, health and property by reducing traffic congestion, which in turn not only improves air quality but also helps to reduce traffic accidents. Further, the band waves themselves that are used to operate E-ZPass are not commercially available to the public. While in some instances E-ZPass account holders must purchase or place a deposit down on their transponders, this amount is merely used to off-set the actual cost of the transponders which would otherwise have to be born by not-for-profit public service entities like NYSTA.

The E-ZPass system exists today because a multitude of not-for-profit toll agencies in a multitude of states have invested hundreds of million of dollars in public funds to create this interoperable, reciprocal system. This NPRM, by limiting its scope to initial licenses, does not on its face appear to affect existing licenses or renewals thereof. However, this NPRM suggests that any new state or toll authority wishing to join the E-ZPass system may have to engage in an auction to obtain the necessary frequencies for operation. If such an approach is adopted, it will effectively eliminate the potential to expand the E-ZPass system and thereby significantly diminish the value of the investments already made by existing members of the system. Furthermore, it preemptively places at risk the millions of dollars already invested by other toll agencies that have begun but not completed implementation of this system on their roadways.

The public interest would not be served by requiring quasi-governmental, not-for-profit, public service entities such as toll authorities to bid for geographic spectrum rights. Such a structure would be inherently impractical and unsuitable for such authorities given the small geographical service area requirements of non-multilateration LMS systems. Furthermore, it would be impractical for the Commission to design service area and channelization plans to accommodate the diverse spectrum requirements of different types of LMS systems under exclusive licensing.

The public interest would also not be served by requiring quasi-governmental, not-for-profit, public service entities to compete with commercial interests for the purchase of spectrum shifts. The cost of doing so would be a financial burden on the public that cannot be justified and is not necessary to foster spectrum efficient service by toll authorities. The loss of primary spectrum rights to another bidder in the event a toll authority were to be outbid by a commercial entity

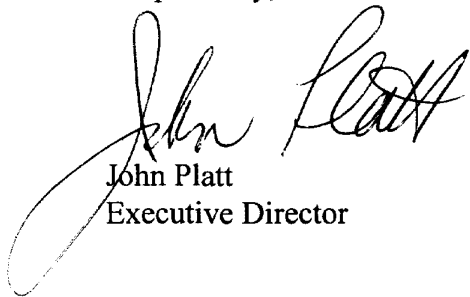
July 1, 1999

would also impair or possibly preclude needed technical upgrades, changes or geographic shifts in their incumbent ETC/other systems. The threat of possible stranded and wasted public investments under such circumstances has not only operational consequences but may also produce backlash from the public whose quality of life is affected.

The possible overlay licensee and band manager approaches outlined in the FCC's NPRM are absolutely not acceptable substitutes for the current shared use licensing schemes for many of the same reasons presented above.

We encourage the Commission to continue the existing shared use licensing scheme for the non-multilateration portions of the 902-928 MHz band. It is the most effective means to ensure that electronic toll collection, and the investment of significant public funds to create and operate a multi-state ETC system, are protected and supported as the Commission implements the Balanced Budget Act of 1997.

Respectfully,

A handwritten signature in black ink, appearing to read "John Platt", with a large, sweeping flourish extending from the bottom left.

John Platt
Executive Director

Courtesy copies: Gary D. Michael
Rena Barta